ZSW v Republic (Criminal Appeal 011 of 2023)
[2025] KEHC 10535 (KLR) (18 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10535 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT THIKA

CRIMINAL APPEAL 011 OF 2023

TW OUYA, J

JULY 18, 2025

BETWEEN

ZSW ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Appeal arising out of the conviction and sentence of Hon. D. Milimu (Senior Resident Magistrate) in Thika Chief Magistrate's Court Sexual Offence Case No. SO E057 of 2021 delivered on 19th January 2023)

JUDGMENT

1. The appellant was charged with the offence of incest contrary to Section 20 (1) of the *Sexual Offences Act*. The particulars of the offence were that on diverse dates between 2016 and 21st June 2021 in Juja Sub County within Kiambu County, being a male person caused his penis to penetrate the vagina of BNW a female juvenile aged 12 years who was to his knowledge his daughter.

2. In the alternative, he faced a charge of committing an indecent act with a child contrary to Section 11(1) of the Sexual Offence Act. The particulars of the charge were that, on diverse dates between 2016 and 21st June 2021 in Juja Sub County within Kiambu County, intentionally and unlawfully touched the breast and vagina of BNW, a girl aged 12 years with his hands and penis.

3. The prosecution called a total of five witnesses and at the end of a full trial the appellant was convicted of the offence of incest contrary to Section 20 (1) of the *Sexual Offences Act* and sentenced to life imprisonment.

4. Aggrieved with both conviction and sentence, the appellant lodged the appeal herein on the following amended grounds:

i. The trial magistrate erred in law and fact in overlooking constitutional fairness for a flawed trial as grave violation of the procedural law and constitutionally fundamental and non derrogable (Miranda) rights;

ii. The learned magistrate erred in law and in fact by admitting a grossly defective charge sheet contrary to article 47, 159 (1) (2) (d), and 160 (1) of *the Constitution*, Sections 89 (5), 134,179-190, 214 (1) of the CPC

iii. The trial magistrate erred in law and in fact in illegally admitting evidence contrary to the exclusionary rule of Article 50 (4) of *the Constitution*.

iv. The trial court erred in law and in fact by failing to observe that crucial witnesses were not availed for testimony or cross examination contrary to Section 146 (iv) of the *Evidence Act*, CAP 80 Laws of Kenya

v. The learned trial magistrate erred in law and in fact in analysing and evaluating the Respondent's evidence separately, forming a considered opinion or impression thereof and then laying the burden of disproving and or dispelling the pre meditated impression upon the appellant contrary to the established principle in Criminal law, which casts the burden of proof upon the Respondent

vi. The learned trial magistrate erred in law and in fact by disregarding the vital features of the case, appreciating scrutiny which was not free from care and caution hence failure to consider the evidence objectively and dispassionately which gravely violated Section 107 of the *Evidence Act*

vii. The magistrate erred in law and fact in failing to consider and disregard his submission and thus arrived at a conclusion which is contrary to law and weight of the evidence on record.

viii. The learned trial magistrate erred in law and in fact in making a finding that the prosecution had established guilt against him to the required standard of beyond reasonable doubt when the Respondent's evidence was riddled with massive contradictions which could not sustain a conviction.

ix. The learned trial magistrate erred in law and in fact in finding that and holding that he never attempted to exonerate himself while the opposite is true and without assigning any credible and or plausible reason and or basis for such finding, consequently, the learned magistrate, failed to approach the judgment with an impartial judicial mind and hence the failure to take cognizance of the material discrepancies apparent in the evidence tendered by the Respondent's witnesses.

x. The sentence of life imprisonment meted has overridden the proportional legal tenets of punishment thus does not achieve the objectives intended in our justice system and goes against the new developments in the matters law hence sentence legality.

5. The Respondent opposed the appeal on the basis that evidence tendered by the prosecution was not controverted by the appellant in cross examination. The Respondent thus contends that the prosecution proved its case beyond reasonable doubt.

6. As this is a first appeal, I am enjoined to consider all the evidence and reach an independent decision whether or not to uphold the judgment. In so doing, it is necessary to set out the facts as they emerged before the trial court. See Okeno v Republic [1972] E.A 32.

7. PW1, BW, gave unsworn evidence stating that she started living in [Particulars withheld] children's home from May 2021. Prior to that she lived with her mother, her step father (the appellant) and her brother J. She testified that she started living with the appellant when she was six years old. From that time, the appellant started defiling her. She stated that on 19th June 2021, on a Saturday, at around 10.00 am, the appellant told her that he wanted to have sex with her. She told him that it is wrong. Thereafter, the appellant took her to the bed, put his penis in her vagina and once he finished, PW1 went outside to wait for the appellant. The appellant then prepared a meal and asked her to eat but she refused. When her mother came home, she informed her that PW1 had defiled her. However, her mother informed her that she would take her to the village. PW1 waited till Monday and informed her teacher, called N, that the appellant had defiled her. The teacher took her to the police station at Kahuria. That incident was the third time the appellant was defiling her. The appellant had previously defiled her, she informed her aunt, but the appellant was arrested and set free. PW1 further testified that the appellant is violent, he would beat her mum and brother hence causing her brother to run away from home. She further added that the appellant warned her against telling anyone about the rape. She ended by identifying the appellant as the man who had defiled her, she pointed at him. PW1 testified that when the appellant raped her on 21st June 2021 she bled from her vagina, her panty was blood stained and she threw it.

8. PW2, NWM, testified that she is a teacher at a secondary school but previously a teacher at a primary school. She testified that on 21st June 2021, PW1 ran to her after assembly and informed her that the appellant had raped her on 19th June 2021. That the appellant had come from work, found PW1 in the house and proceeded to rape her. She went into shock and on regaining consciousness the appellant told her to go have a bath but she refused. She sat outside waiting for her mother, who came back and told PW1 that she would give PW1 fare to go to the village. PW2 immediately informed the headteacher about the incident and PW1 was rescued by the children's home on the same day. She did not know PW1's father prior to the incident.

9. PW3, Warimu Ngatia, is a clinical officer at Kianduthu Health Centre. She testified that on 21st June 2021 at 2.00pm a girl called Beryl Wafula came to the hospital with a history of having been defiled by the step father since she was nine years old. On medical examination it was noted that the hymen was broken. There was no vaginal discharge and the high vaginal swab was negative. The minor also complained of back pain and pain on the lower stomach. She was accompanied by a police officer and a teacher. There was neither blood nor bruises on the minor's vagina.

10. PW4, No. 11681 P.C Gerald Kariuki, stated that he is a police officer attached to Juja Police station performing general duties. He testified that on 22nd June 2021 he was at the police post when he was called by the OCS Witeithie and instructed to arrest the appellant. He proceeded to the appellant's house and arrested him. He had not known the appellant prior to his arrest.

11. PW5, No. 11xxx PC Wanjiru Jane attached to Witeithie Police station stated that she is the investigating officer in the case. She testified that on 21st June 2021 she was in the office at around 5.00pm when a head teacher came to report that one of her student's had reported to have been defiled by her step father. An age assessment report indicated that she was between 13-15 years of age. The said minor had no birth certificate. The minor told her that on 19th June 2021 she had finished washing utensils when the appellant came, and threatened to kill her if he refused to have sex with her. The appellant then inserted his right finger in her vagina, then put his penis in her vagina. When the appellant was done, the minor went outside and waited for her mother. However, her mother said that she would take the minor to the village. When the mother failed to take any action, PW1 opted to report the incident to her teacher. She visited the appellants house and noticed that it was a single room. She was unable to

trace PW1's mother. Therefore, she was compelled to subject the minor to age assessment to ascertain her age. PW5 clarified that she took the minor to hospital on 20th June 2021, therefore the date of 23rd June 2021 indicated on the P3Form was thus in error.

12. At the close of the prosecution's case, the trial court ruled that a prima facie case had been established against the appellant to warrant him being put on his defence.

13. The appellant elected to give unsworn evidence in defence. He did not call any witness. He stated that in 2021, PW1 and PW2 had some misunderstandings. On 26th May 2021 he was arrested by police officers while in his house and escorted to Witeithie police station. The police later demanded for Ksh. 50,000.00 to release him but he did not have the money. He was later arraigned in court and charged with the instant offence.

14. The appeal was canvassed by way of written submissions.

15. The Learned State Counsel, Ms. Grace Emisiko, relied on written submissions dated 26th November 2024. She urged that the prosecution proved all the ingredients of the offence as required by law beyond reasonable doubt.

16. The Respondent further stated that the evidence tendered in Court was not in any way discredited by the defence during cross examination. Therefore, the conviction was proper. Accordingly, the Respondent urged the honourable court to dismiss the appeal for lack of merit, uphold the conviction and sentence to life imprisonment.

17. The duty of the first appellate court remains as set out in the Court of Appeal for Eastern Africa in Pandya -vs- Republic [1957] EA 336 is as follows:-

> "On a first appeal from a conviction by a Judge or magistrate sitting without a jury the appellant is entitled to have the appellate court's own consideration and views of the evidence as a whole and its own decision thereon. It has the duty to rehear the case and reconsider the witnesses before the Judge or magistrate with such other material as it may have decided to admit. The appellate court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. When the question arises which witness is to be believed rather than another and that question turns on manner and demeanor, the appellate court must be guided by the impression made on the Judge or magistrate who saw the witness but there may be other circumstances, quite apart from manner and demeanor which may show whether a statement is credible or not which may warrant a court different.

18. Having looked at the evidence on record together with the submissions of the appellant and the respondent the following issues commend themselves for consideration

    i. Whether the prosecution proved the case against the appellant beyond reasonable doubt

    ii. The legality of the sentence meted against the appellant

19. On the first issue, the offence of incest is stated in Section 20(1) of the *Sexual Offences Act* as:-

    1. Any male person who commits an indecent act or an act which causes penetration with a female person who is to his knowledge his daughter, granddaughter, sister, mother, niece, aunt or grandmother is guilty of an offence termed incest and is liable to imprisonment for a term of not less than ten years, provided that if it is alleged in the information or charge that the female person is under the age of eighteen years, the accused person shall be liable to imprisonment

for life and it shall be immaterial that the act which causes penetration or the indecent act was obtained with the consent of the female person.

20. Consequently, the ingredients for the said offence, that is, Incest, are:-

    a. Knowledge that the person is a relative

    b. Penetration or Indecent Act

    c. Identification of the perpetrator

    d. Proof of age of the victim

21. Section 2 of the *Sexual Offences Act* defines penetration as "the partial" or complete insertion of the genital organs of a person into the genital organs, of another while Indecent act means "any contact between any part of the body of a person with the genital organs, breast or buttocks of another but does not include an act that causes penetration."

22. Furthermore, the Act identifies the test of relationship under Section 22 in the following manner:

23.

    (1) In cases of the offence of incest, brother and sister includes half-brother, half-sister and adoptive brother and adoptive sister and a father includes a half father and an uncle of the first degree and a mother includes a half mother and an aunt of the first degree whether through lawful wedlock or not.

24. It flows therefore from the above provision that there must exist a defined relationship between offenders, which relationship in contemplated under the Act. As such, any other relationship not contemplated under the Act does not pass the test of relationship under the *Sexual Offences Act*.

25. In the instant case, PW1 testified that he was defiled by the appellant who was his step father. Though the appellant neither admitted nor denied the existence of this relationship, it was the duty of the prosecution to prove that the appellant was indeed the step father of PW1 as knowledge that the person was a relative is a key ingredient of the offence of incest. I have perused the record and the judgment and I note that the only evidence as to the existence of any relationship within the prohibited degree of consanguinity between the appellant and the victim was the evidence of PW1.

26. The court in MNM v Republic [2021] eKLR stated thus:-

> 'The prosecution cannot simply claim that they established the relationship with no proof of how the same was done and the same becomes admissible in court. The admission of such facts/evidence without proof carries the risk of injustice and lowering the standard of proof in criminal case. Even where the accused has failed to admit or controvert a line of evidence, the court must satisfy itself and ensure that the accused person is not being convicted on any quantum of evidence less than proof beyond a reasonable doubt''

27. In the instant case, neither the mother to PW1 nor any other relative was called by the prosecution to testify as to the existence of a husband-wife relationship between PW1 and the appellant to qualify the appellant as a step father to the victim. Therefore, this case is distinguishable from B.N.M v REPUBLIC [2011] KEHC 1662 (KLR) which the trial court relied on in determining that the appellant was indeed a stepfather to PW1.

28. In the BNM case (supra) the victim's mother testified as a witness and clarified that she was married to the appellant and that the appellant agreed to accept her child. It is by dint of that clarification that the

court noted that, the appellant though not the biological father of the child, was in actual fact her step father for having married the child's mother. This, therefore, means that the existence of a daughter-stepfather relationship was inferred due to the existence of a marriage relationship between the victim's mother and the appellant. Consequently, the court stated:

> Does this fact that no biological or blood ties exist between the two negate a charge of Incest? The answer is to be found in section 22 of the *Sexual Offences Act* which deals with 'Test of relationship'. S. 22(1) provides as follows:
>
> "22(1) In cases of the offences of Incest, brother and sister includes half brother, half sister and adoptive brother and adoptive sister and a father includes a half father and an uncle of the first degree and a mother includes a half mother and an aunt of the first degree whether through lawful wedlock or not ..."
>
> My own understanding is that 'half father' is a term which means exactly the same as 'step-father' – it means one who is not a biological father of the child. Therefore, by dint of this S 22(1) of the Act the appellant being a step-father of the complainant and one who stood in 'loquo parenthis' can legally be charged and indeed convicted of the crime of Incest with her.

29. A similar inference can therefore not be drawn in the instant case since there was no proof of the existence of a daughter- stepfather relationship between the appellant and the victim. Though PW5 merely stated that she was unable to trace PW1's mother to testify, she did not spell out the practical steps that she took to establish the whereabouts of PW1's mother. PW5 only testified that PW1's mother said that she was not aware if anything like that had happened, as such she was unable to get PW1's birth certificate. It would be expected that in such a crucial case as this, all possible steps would be taken to secure such testimony or from any other person to shed light on the nature of the relationship between the appellant and PW1. In that regard, the prosecution failed to prove that the appellant was a relative to PW1.

30. On the issue of penetration, PW1 testified that the appellant started defiling her from the time that she was six years. She also stated that the act of defilement of 19th June 2021 was the third time the appellant defiled her. On that day, she bled from her vagina and her panty was blood stained. Upon being subjected to medical examination two days later, PW3 testified that though the hymen was broken, there were no bruises on the vagina, the labia majora and minora as well as the vagina were normal. A high vaginal swab was negative and no spermatozoa was seen.

31. It is trite that the victim of defilement needs to give details of how the act of penetration took place. The record shows that PW1 testified that:

> He started defiling me when I was six years. This event in court on 19/06/2021 on a Saturday at around 10.00 am, my stepfather told me he wanted to have sex with me. I told him it is wrong. He took me to the bed, put his penis in my vagina. After he finished, I went outside to wait from him.

32. PW1's testimony in this regard was not specific as to the act of penetration; and her evidence of the appellant placing his penis on her vagina does not necessarily prove that penetration took place, in the absence of further evidence and details as to what actually happened.

33. The Court in Julius Kioko Kivuva v Republic [2015] eKLR stated that:-

> Evidence of sensory details, such as what a victim heard, saw, felt, and even smelled, is highly relevant evidence to prove the element of penetration, as a victim's testimony is the best

way to establish this element in most cases. The specificity of this category of evidence, even though it may be traumatic, strengthens the credibility of any witness's testimony, and is particularly powerful when the ability to prove a charge rests with the victim's testimony and credibility as it does in this appeal."

34. Curiously, though PW1 said in cross examination that when she was defiled on 21st June 2021 by the appellant, she experienced vaginal bleeding including having blood stains in her panty, she never told this to anyone; neither PW2 nor PW5. Also, whereas PW1 states that after the defilement the appellant cooked a meal and asked her to eat but she refused, she allegedly told PW2 that the appellant asked her to take a bath but she refused, no mention of either a bath or food was made to PW5. Furthermore, while giving her evidence in chief, PW1 never mentioned that the appellant threatened her in any way, she testified that the appellant asked her not to tell anyone about the incident. However, PW5 on the other hand testified that PW1 informed her that the appellant threatened to kill both her and her mother if she told anyone about the defilement. It is thus unclear why PW1 was quick to tell her mother about the defilement if at all she had been threatened by the appellant as is alleged by PW5. Closely related to this is the minor's allegation that the appellant defiled her in 2016 and she informed her aunty Chebet about it. However, neither the said aunty Chebet nor any other witness was called upon by the prosecution to either support or controvert this allegation.

35. Though the medical evidence demonstrates that the hymen was broken, it is now trite that a broken hymen alone, is not per se the proof of defilement. PW3 did not find any injuries or evidence of recent penetration on the minor's genitalia. The Court of Appeal in P.K.W v Republic [2012] KECA 103 (KLR) remarked that:

> Hymen, also known as vaginal membrane, is a thin mucous membrane found at the orifice of the female vagina with which most female infants are born. In most cases of sexual offences we have dealt with, courts tend to assume that the absence of hymen in the vagina of a girl child alleged to have been defiled is proof of the charge. That is, however, an erroneous assumption. Scientific and medical evidence has proved that some girls are not even born with hymen. Those who are, there are times when hymen is broken by factors other than sexual intercourse. These include insertion into the vagina of any object capable of tearing it like the use of tampons. Masturbation, injury, and medical examinations can also rupture the hymen. When a girl engages in vigorous physical activity like horseback riding, bicycle riding, and gymnastics, there can also be natural tearing of the hymen. See the Canadian case of The Queen Vs Manual Vincent Quintanilla, 1999 ABQB 769.

36. It is almost obvious that sexual assault cases especially those involving minors are committed in exclusion of eye witnesses. That is why the law came to the aid of these vulnerable victims by dint of the proviso to Section 124 of the *Evidence Act*. The same reads:

> " Provided that where in a criminal case involving a sexual offence the only evidence is that of the alleged victim of the offence, the court shall receive the evidence of the alleged victim and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth" (emphasis added)."

37. In the instant case, there was no record in the proceedings that demonstrates that the trial court was persuaded that the minor was telling the truth. The trial court formed an opinion that the minor had been penetrated based on the testimony of the minor and the contents of the P3 Form. Notably, the P3 Form is clear that there were no injuries on the child's genitalia nor any spermatozoa seen, save for

the fact that the hymen was broken. Therefore, there was no other observation made by the trial court regarding the reason why the court believed that the minor was telling the truth.

38. In Nyeri Criminal Appeal No. 270 of 2012 George Kioji Versus Republic the court expressed itself thus on proof of commission of a sexual offence:

> " Where available, medical evidence arising from examination of the accused and linking him to the defilement would be welcome. We however hasten to add that such medical evidence is not mandatory or even the only evidence upon which an accused person can properly be convicted for defilement. The court can convict if it is satisfied that there is evidence beyond reasonable doubt that the defilement was perpetrated by accused person. Indeed, under the proviso to section 124 of the *Evidence Act*, Cap 80 Laws of Kenya, a court can convict an accused person in a prosecution involving a sexual offence, on the evidence of the victim alone, if the court believes the victim and records the reasons for such belief.,"

39. It would appear that the child had been defiled, but the matter was handled in a rather inadequate manner, and the evidence gathered may not suffice to convict. On the question of age of the minor, PW5 tendered an age assessment report that concluded that the minor was between 13-15 years of age. Remarkably, the age of the minor is not in dispute.

40. Also, the identity of the appellant is not in dispute as the case is based on recognition evidence and not identification.

41. Although I recognize that no number of witnesses is required to prove the prosecution's case, the appellant's assertion that crucial witnesses were not called is not idle, considering the circumstances of this case. In Paul Gatiri Kanja versus Republic [2016] eKLR, the Court of Appeal at Nyeri observed that:

> " It is of course trite that there is no number of witnesses required for the proof of a fact. See Section 143 of the *Evidence Act*. However, it has long been the law that when the prosecution calls evidence that is barely adequate, then the failure to call vital witnesses may entitle the court to draw an inference that had such witnesses been called, their evidence would have been adverse to the prosecution case."

42. The principle used to determine the consequences of failure to call witnesses was succinctly stated in Bukenya& Others v Uganda [1972] EA 549; where the Court held that:

> " (i) The prosecution must make available all witnesses necessary to establish the truth even if their evidence may be inconsistent.
>
> (ii) That Court has the right and duty to call witnesses whose evidence appears essential to the just decision of the case.
>
> (iii) Where the evidence called is barely adequate, the court may infer that the evidence of uncalled witnesses would have tended to be adverse to the prosecution."

43. In the instant case, no witness was called to corroborate the existence of a marital relationship between the appellant and PW1's mother. Also, there were no attempts made to call the said Aunty Chebet who had allegedly been informed of the fact that the appellant had been defiling the minor. Further, PW6 did not detail the steps that she took to trace PW1's mother to testify as a witness in the case.

44. Given the totality of the evidence and the specific circumstances of this case, I am not satisfied that evidence was tendered that proved the case against the appellant. His conviction on the main charge of incest was thus unsafe.

45. In criminal cases, the standard of proof is beyond reasonable doubt and it was due to this that Mativo, J (as he then was) in Elizabeth Waithiegeni Gatimu vs. Republic [2015] eKLR expressed himself as hereunder:

> " To my mind the rule that the prosecution may obtain a criminal conviction only when the evidence proves the defendant's guilt beyond reasonable doubt is basic to our law. It is necessary that guilt should not only be rational inference but also it should be the only rational inference that could be drawn from the evidence offered taking into account the defence offered if any. If there is any reasonable possibility consistent with innocence, it is the duty of the court to find the defendant not guilty...Having considered the circumstances of this case, the prosecution evidence and the defence offered by the appellant, I am not persuaded that the conviction was justifiable and that this is a case where the accused ought to have been given the benefit of doubt. To give an accused person the benefit of doubt in a criminal case, it is not necessary that there should be many circumstances creating the doubt(s). A single circumstance creating reasonable doubt in a prudent mind about the guilt of an accused is sufficient. The accused is entitled to the benefit of doubt not a matter of grace and concession, but as a matter of right. An accused person is the most favorite child of the law and every benefit of doubt goes to him regardless of the fact whether he has taken such a plea. Reasonable doubt is not mere possible doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence leaves the mind of the court in that condition that it cannot say it feels an abiding conviction to a moral certainty of the truth of the charge."

46. I have also considered the alternative charge of committing an indecent act with a child contrary to Section 11(1) of the *Sexual Offences Act*. The minor has testified that:

> " He started defiling me when I was six years. This event in court on 19/06/2021 on a Saturday at around 10.00 am, my stepfather told me he wanted to have sex with me. I told him it is wrong. He took me to the bed, put his penis in my vagina. After he finished, I went outside to wait from him"

47. Section 11 (1) of the *Sexual Offences Act* provides that,

> Any person who commits an indecent act with a child is guilty of the offence of committing an indecent act with a child and is liable upon conviction to imprisonment for a term of not less than ten years.
>
> Section 2 provides that,
>
> > "indecent act" means any unlawful intentional act which causes—
> >
> > (a) any contact between any part of the body of a person with the genital organs, breasts or buttocks of another, but does not include an act that causes penetration;
> >
> > (b) exposure or display of any pornographic material to any person against his or her will

48. In the instant case, I find that the prosecution proved the offence of committing an indecent act with a child to the required standard of proof. It is trite law that an appellate court should be slow to depart from a finding of fact by a trial court. However, given the shortcomings I have set out above, it will be very unsafe to uphold the appellant's conviction for the offence of incest contrary to Section 20 (1) of the *Sexual Offences Act*.

49. I therefore proceed to set aside the conviction of the appellant on the main charge and substitute the same with the conviction on the offence of committing an indecent act with a child contrary to Section 11 (1) of the *Sexual Offences Act*.

50. The upshot of the matter is that the appeal is disposed in the following terms:

    a. The conviction of incest is set aside and replaced with that of committing an indecent act with a child contrary to Section 11 (1) of the *Sexual Offences Act*;

    b. The appellant is convicted on Count II, committing an indent act with a child.

    c. The sentence of life imprisonment is hereby set aside and replaced with a sentence of 10 years imprisonment.

    d. The sentence shall run from the date of arrest

DATED, SIGNED AND DELIVERED VIRTUALLY AND ELECTRONICALLY THIS 18TH JULY, 2025.

HON. T. W. Ouya

JUDGE

For Appellant.....Absent

For Respondent.....Ms Torosi

Court Assistant.....Brian